



POLICE DEPARTMENT CITY OF NEW YORK

October 20, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer James Hart
Tax Registry No. 947065
1 Precinct
Disciplinary Case No. 2015-14479

Charges and Specifications:

1. Said Police Officer James Hart, on or about April 17, 2015, at approximately 0315 hours, while assigned to the 1st Precinct and on duty, in the vicinity of the 1st Precinct Stationhouse, located at 16 Ericsson Pl, New York County, did wrongfully use force against Mathew Pritchett, in that he punched Mathew Pritchett in the nose with a closed fist, without police necessity. *(As amended orally at trial)*
P.G. 203-11 - USE OF FORCE

Appearances:

For CCRB-APU: Andre Applewhite, Esq.
Civilian Complaint Review Board
100 Church Street, 10th floor
New York, NY 10007

For the Respondent: Stuart London, Esq.
Worth, Longworth & London
111 John Street, Suite 640, LLP
New York, NY 10038

Hearing Date:

August 15, 2016

Decision:

Not Guilty

Trial Commissioner:

ADCT Nancy R. Ryan

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on August 15, 2016. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. CCRB called Mathew Pritchett as a witness. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Not Guilty of the charged misconduct.

FINDINGS AND ANALYSIS

It is undisputed that on April 17, 2015, at approximately 0315 hours, Respondent was on duty, in uniform, patrolling in a marked police vehicle. He was directed to return to the 1st Precinct to remove a prisoner, Matthew Pritchett, to Bellevue Hospital for psychiatric evaluation after he refused to be fingerprinted. Respondent and his partner went to Mr. Pritchett's cell and escorted him to the front desk of the precinct. The desk sergeant told them they couldn't escort Mr. Pritchett at that time and that Mr. Pritchett needed to be returned to his cell. When they got in the vicinity of the cell, Mr. Pritchett, who had on three layers of hoodies and jackets, was asked to remove his shoe laces, belt and any strings in his hoodies. He was not handcuffed at this time. During the course of the interaction between Respondent and Mr. Pritchett in this area outside the cell, Respondent punched Mr. Pritchett in his face. Mr. Pritchett fell to the floor. He was taken to the hospital and he was diagnosed with a broken nose. The area of dispute in this case is what took place between when Mr. Pritchett was asked to remove the items of clothing and when he was punched.

Mr. Pritchett acknowledged in his testimony that he has been arrested almost 50 times resulting in 22 convictions including four or five felony convictions. (Tr. 35, 50-51) He also admitted he has used aliases and on one occasion he lied to a judge. (Tr. 35, 48, 65-66) With regard to April 17, 2015, he testified that he was in the precinct after being arrested for shoplifting. (Tr. 36) Respondent was not involved with the arrest. (Tr. 57) Mr. Pritchett testified that he refused to be fingerprinted and after a few hours Respondent and his partner came to his cell. When they took him out of the cell, he put on his hoodie and then a fleece over that and then a black polo coat over the fleece. (Tr. 55) The outer jacket had a zipper. (Tr. 78) The fleece had a quarter zip which was partially zipped up. (Tr. 79-80) Respondent and his partner then brought him to the desk sergeant where they were told he had to be taken back to his cell. (Tr. 55-56) Mr. Pritchett testified that he was not annoyed or mad about this and he did not tense up as he went back to the cell area. (Tr. 56)

Mr. Pritchett testified that when he was back in the cell area he had to remove his shoe laces, belt and strings in his hoodie. Mr. Pritchett first unzipped the outer jacket but kept it on. (Tr. 78) He noticed the strings in the hoodie couldn't be removed because they were sewn in. He further testified that he tried to explain to Respondent that the strings didn't come out and at that point Respondent went to grab his hoodie and put his hands around the top part of the hood. The hood had been down at the time and Respondent grabbed the part of the hood on Mr. Pritchett's right side in his shoulder area. (Tr. 36-37, 59, 76-77) Prior to this, Respondent had not been physically or verbally abusive to him. (Tr. 57) Mr. Pritchett indicated that when Respondent grabbed the hood, he thought Respondent was trying to hurt him since it wouldn't have been possible for Respondent to pull the hoodie off with the two other layers of clothing on top of it. When Respondent grabbed the hood, Mr. Pritchett, testified, "[I] backed up, and when

I backed up, I clenched my hoodie to hold it so he wouldn't pull everything off over the top of my head." He described clenching as wrapping his left and right closed hands around his hoodie. (Tr. 38, 59-62) He further testified that, "At that time I just started getting hit with a barrage of - punches. I felt -- I found myself on the floor. I lost consciousness. But then I realized what happened when I was coming back to consciousness, I realized what happened, I got off the floor. I was bleeding profusely from the nose." (Tr. 37-38) Mr. Pritchett testified that he then asked Respondent why he did that and the Respondent told him, "Next time when I fucking tell you to do something, fucking do it." (Tr. 38-39)

Respondent testified that Mr. Pritchett had become livid when they were told at the front desk that he had to be returned to his cell. He described Mr. Pritchett as immediately tensing up and, although he was in handcuffs, he was flailing around so much that they had to grab his upper arm to guide him back towards the cells. Respondent described Mr. Pritchett as screaming at him that all the police wanted to do was to shoot him. (Tr. 14) When they got Mr. Pritchett back in the area of the cells he was uncuffed and Respondent "asked him nicely" three times to remove his hoodie because it had zippers and strings that weren't allowed in the cells.

Respondent testified that Mr. Pritchett told him to go "fuck himself and said, '[he] was not complying.'" Respondent further testified that after Mr. Pritchett refused to comply, "I gently and slowly, it was not sudden, put my hand -- my right hand on the zipper and slowly took it down. Mr. Pritchett didn't like this very much. He grabbed on to my right arm." (Tr. 15)

Respondent continued that Mr. Pritchett, "with his other hand, his right arm in a cocked back fashion with it tightly clenched and he was all tensed up, and then he screamed out, 'I'm going to spit in your face and I'm going to [REDACTED]' He described the right hand in the clenched fist, "looking like a direct trajectory to punch me." (Tr. 16) Respondent acknowledged that at

this point he punched Mr. Pritchett in the face one time. (Tr. 16) Respondent felt that he had no other enforcement method available to him at the time since there was a chair behind him and he would have fallen if he backed up. He didn't want to use a restraint because Mr. Pritchett was screaming about [REDACTED]. (Tr. 19) His partner was about four-and-a-half-feet away at the time. (Tr. 22) On cross-examination, Respondent admitted he never ordered Mr. Pritchett to release his arm or put his hand down or unclench his fist. (Tr. 24) Nor did he warn Mr. Pritchett that he was going to use force. (Tr. 24) Respondent had his ASP and pepper spray with him at the time. (Tr. 25)

After he was punched, Mr. Pritchett fell to the floor on his face and immediately got back up. He was bleeding, so Respondent said he attempted to render aid, which Mr. Pritchett refused. (Tr. 16) On cross-examination, Respondent stated that there was a roll of paper towels he was going to use to stop the bleeding from Mr. Pritchett's nose because he "had compassion for him." (Tr. 27) Respondent testified that Mr. Pritchett continued to threaten to [REDACTED] [REDACTED] after he got up. Respondent stated that he rear-cuffed Mr. Pritchett, without incident, while he was bleeding, but that Mr. Pritchett refused to go into the cells and stood in the corner, bleeding, and still threatening to [REDACTED]. After ESU responded, Mr. Pritchett went into the cell. (Tr. 17)

Respondent also testified that in 2012 he [REDACTED]
[REDACTED]
[REDACTED] (Tr. 17-18)

In deciding this case it is clear that force was used. Respondent has admitted to punching Mr. Pritchett and as a result, Mr. Pritchett, based on the medical records in evidence, did sustain, "acute bilateral nasal bone fractures." (CCRB Ex. 1) The question, therefore, is whether the

CCRB has proven by a preponderance of the evidence that the force used by Respondent was without police necessity as charged in the Specification. Under the Patrol Guide procedure in effect at the time of the incident, "Only that amount of force necessary to overcome resistance will be used to effect an arrest or take a mentally ill or emotionally disturbed person into custody." In addition, all members of the service at the scene of a police incident must "use minimum necessary force." (Patrol Guide Procedure No: 203-11)

Respondent's position is that he punched Mr. Pritchett one time to protect himself from the imminent threat of being punched and spit on by Mr. Pritchett who was claiming to [REDACTED]. Mr. Pritchett's contention is that Respondent punched him in a "barrage" of punches because he was angry that Mr. Pritchett didn't take his hoodie off as he had told him to. While I find that there are areas where both Mr. Pritchett's and Respondent's testimony lack the ring of truth, it remains the CCRB's burden to prove the charges by a preponderance of the evidence. I find that they have not done so in this case.

Mr. Pritchett's testimony first of all must be weighed in light of his history of arrests, which may tend to bias him against the police, as well as his admission that he has in fact lied to a judge on a past occasion. Mr. Pritchett's credibility is clearly called into question with his description of being subject to a "barrage" of punches. This does not seem to be supported by the medical records. He was given a CT scan of the head in the hospital and there was no evidence of acute intracranial abnormality. The CT scan found only the acute bilateral nasal bone fractures. There is also a note in the medical records that his teeth were intact. There is only an indication of dried blood on his face, as opposed to any open lacerations or abrasions being noted. It seems unlikely that a "barrage" of punches would have just hit Mr. Pritchett's nose in the middle of a confrontation between Respondent and Mr. Pritchett without causing

some other facial damage. With regard to his claim of losing consciousness, this also could be seen as embellishment by Mr. Pritchett, as the medical records make a point of noting that Mr. Pritchett did not initially mention this when he provided his account of what happened.

As Mr. Pritchett was also wearing three layers of jackets at the time of the incident, his testimony that Respondent grabbed at and tried to pull at the innermost layer, the hoodie, does not make sense. If Respondent wanted him to take the hoodie off, he obviously would have seen that it could not have come off until the jacket and fleece were removed.

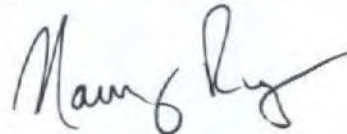
With regard to the Respondent's testimony, I question his inclusion of a fear of being spit on by Respondent as one element justifying his punch. First of all, by punching someone in the nose there is a very good likelihood that the punch [REDACTED]

[REDACTED] Secondly, there is an inconsistency in that Respondent apparently had no qualms about approaching Mr. Pritchett while Mr. Pritchett was bleeding and still screaming about spitting on him (Respondent) when he (Respondent) went to have direct body contact with him (Mr. Pritchett) to handcuff him (Mr. Pritchett), or when he (Respondent) approached him (Mr. Pritchett) to aid him (Mr. Pritchett) based on his (Respondent's) "compassion" after he (Respondent) punched him.

In this case, while Respondent's testimony about Mr. Pritchett's threat of spitting on him is questionable, I do credit Respondent's account that he perceived he was about to be punched by Mr. Pritchett. Respondent described Mr. Pritchett as clenching his fist and pulling it back in a position where it was on a "direct trajectory" to Respondent. Respondent's testimony on this point is somewhat supported by the testimony of Mr. Pritchett. While Mr. Pritchett testified that he was just holding on to his hoodie, he gave a description of his fists being clenched as he was grabbing around the top part of his hoodie, which corresponds to Respondent's testimony of

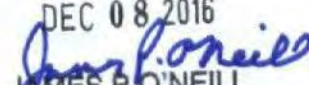
seeing Mr. Pritchett's clenched fist in a position from which he was about to be punched. At this point, Respondent did not have time to use pepper spray or an ASP as suggested by the questioning of CCRB. I credit Respondent's testimony that he could not back up based on the placement of the chair behind him. I find that Respondent was under threat of imminent harm and that the single punch to Mr. Pritchett was a minimal use of force to protect himself. I therefore find Respondent Not Guilty.

Respectfully submitted,



Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPROVED

DEC 08 2016

JAMES P. O'NEILL
POLICE COMMISSIONER